UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

Civil Action, File Number ________________

THE KING SERVICE, INC.,
Plaintiff
- against -

SUMMONS IN A CIVIL ACTION

THE CITY OF TROY, NEW YORK,
Defendant.

To:

THE CITY OF TROY, NEW YORK
1 Monument Square
Troy, New York 12180

YOU ARE HEREBY SUMMONED and required to serve upon

PLAINTIFF'S ATTORNEY:

Friedman, Hirschen, Miller & Campito, P.C.
131 State Street, PO Box 1041
Schenectady, New York 12301-1041

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you,, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

______________________________ ______________________________
CLERK DATE

____
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE KING SERVICE, INC.,
Plaintiff
- against -

THE CITY OF TROY, NEW YORK,
Defendant.

COMPLAINT
JURY TRIAL DEMANDED
CV:

The plaintiff, as and for a complaint alleges as follows:

PARTIES

1. Plaintiff is a corporation organized and existing under and by virtue of the Laws of the State of New York.

2. Defendant is a municipal corporation created pursuant to the Laws of the State of New York.

JURISDICTION

3. As plaintiff alleges that defendant has violated 42 U.S.C. §1983, this Court has jurisdiction pursuant to 28 U.S.C. §§3321 and 3343(3) and (4) and 42 U.S.C. §§1983 and 1988.

FACTUAL ALLEGATIONS

4. On or about November 22, 1999, plaintiff and defendant entered into an Agreement of Lease pursuant to which the City of Troy and the King Service, Inc. intended to exchange ownership parcels of property within the City of Troy.

5. That as of November 22, 1999 the King Service, Inc. was the owner of a certain parcel of real estate located in the City of Troy, State of New York, being further identified as Tax Map No. 111.59-2-3. Said parcel of real estate was commonly known as "The Alamo".

6. That as of November 22, 1999 the defendant was the owner of a certain parcel of real estate located on South River Street, located in the City of Troy, State of New York, being further identified as Tax Map No. 111.67-1-1, consisting of two buildings, a partially collapsed 22,000 sq. ft. commercial warehouse and a commercial office building. Said buildings were occupied in part by at least two tenants as of November 22, 1999.

7. That pursuant to the aforesaid Agreement of Lease, plaintiff and defendant intended to exchange the defendant's above identified property for the plaintiff's above identified property in a transfer qualifying as a simultaneous like kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended such that the plaintiff would become the sole owner of the defendant's aforesaid property and the defendant would become the sole owner of the plaintiff's aforesaid property.

8. The Agreement of Lease further provided that even prior to the like kind exchange, the City of Troy would lease to The King Service, Inc. the City's aforesaid property and allow The King Service, Inc. to immediately use said property to operate its business and to construct its office building, garage and fuel station on the said property. The term of the lease was to be for 99 years commencing December 1, 1999, unless sooner terminated pursuant to the like kind exchange or as otherwise set forth in the lease.

9. The Agreement to Lease provided that the parties agreed to cooperate with each other to implement the Like Kind Exchange. Upon the consummation of the like kind exchange, the lease called for in the Agreement to Lease would be terminated and expire as if such date were the end term of the lease.

10. Upon information and belief, the City Council of the City of Troy, New York, unanimously approved the aforesaid land swap, i.e., the like kind exchange.

11. Upon information and belief, that since 1999, the City of Troy has utilized the property known as "The Alamo" as a yard waste/transfer station.

12. The City of Troy has never consummated the Like King Exchange called for in the Agreement of Lease and has never deeded to plaintiff the 3 acre ± parcel of property identified as Tax Map No. 111.67-1-1.

13. At all times herein mentioned the plaintiff has stood ready to consummate the Like Kind Exchange called for in the Agreement of Lease.

14. On or about June 10, 2003 the defendant, City of Troy, filed a Notice of Motion for Judgment of Foreclosure with regard to property identified as Tax Map No. 111.59-2-3, known as "The Alamo" and owned by plaintiff.

15. In support of its motion for judgment of foreclosure, defendant, through its servants, agents and employees, asserted that plaintiff was delinquent in the payment of taxes on the property known as "The Alamo", Tax Map No. 111.59-3.2 and that there was a tax lien due and owing with regard to such property.

16. On or about June 23, 2003, the City of Troy obtained a judgment of foreclosure with regard to the property known as "The Alamo" further identified as Tax Map No. 111.59-3-2.

17. On April 17, 1998 plaintiff entered into three separate installment payment agreements with defendant, City of Troy, New York, covering seven separate parcels of property, owned by plaintiff, on which taxes had not been paid for tax years 1994, 1995, 1996 and 1997. "The Alamo" was one of the seven properties covered by one of the Installment Agreements and is referred to in the Installment Agreement as Account No. 0600260.

18. The April 17, 1998 Installment Agreement covering "The Alamo", Account No. 0600260, states that the delinquent taxes subject to the Installment Agreement for tax years 1994, 1995, 1996 and 1997 with regard to "The Alamo" property total $26,514.11.

19. The three separate Installment Agreements were for a period of two years and provided that the plaintiff would pay to the City of Troy, New York, eight separate equal quarterly installments for each of the seven separate parcels of property covered by the agreements, including the property known as "The Alamo". The quarterly payment for "The Alamo" property was listed in one of the Installment Agreements as $5,382.61.

20. On June 30, 1998, the plaintiff issued seven separate checks, totaling $77,000.00, to the City of Troy, New York, for quarterly installment payments for each of the seven parcels identified in the three Installment Agreements, including "The Alamo" property.

21. On or about October 30, 1998, the plaintiff again issued seven separate checks totaling $77,000.00 ± to the City of Troy for the quarterly installment payments for each of the seven parcels of property identified in the Installment Agreements, including "The Alamo" property.

22. Upon information and belief, the installment payments made by plaintiff on June 30, 1998 and October 30, 1998 to the City of Troy, were specifically credited by the City of Troy, to the various seven properties covered by the Installment Agreements and in the amounts set forth in the Installment Agreements.

23. On or about February 2, 1999, the plaintiff issued seven separate checks to the City of Troy New York, totaling $77,000.00 ±, for the installment payments for each of the seven parcels of property identified in the three separate Installment Agreements including "The Alamo" property.

24. Upon information and belief, whereas the June 30, 1998 and October 30, 1998 payments made by plaintiff to the City of Troy, New York, were specifically

credited by the City of Troy to the various seven properties and in the amounts set forth in the three Installment Agreements, the $77,000.00 ± payment made by plaintiff on February 2, 1999 was deposited into an account owned and/or controlled by the City of Troy, New York but was not credited and/or allocated by the City of Troy to the seven parcels of property identified in the Installment Agreements, including the property known as "The Alamo".

25. In or about April, 2000, plaintiff contacted the City of Troy, New York to make arrangements to pay off the tax arrears with regard to its properties located on Mill Street at 245 Second Avenue and at 9 North Drive in Troy, New York.

26. The 4/17/98 Installment Agreement between the parties provided that the quarterly payment to be made by plaintiff for the Mill Street property was $3,514.87. Plaintiff made three installment payments on said property but was given credit for only two payments. In April, 2000 plaintiff was informed by the City of Troy that the tax arrears on its Mill Street property totaled $21,089.22 and plaintiff paid that amount to the City of Troy. Had plaintiff been given credit for the February 2, 1999 installment payment made on the Mill Street property, the amount actually due and owing as of April, 2000 was $17,574.35. Thus, when plaintiff paid off the Mill Street tax arrears and made an overpayment of $3,514.87.

27. Upon information and belief, when paying off the tax arrears with regard to its property at 245 Second Avenue, Troy, New York, plaintiff made an overpayment of approximately $5,000.00 to the City of Troy. The overpayment was as a result of the failure of the City of Troy to allocate to the 245 Second Avenue property the installment payment made by plaintiff to the City of Troy on or about February 2, 1999.

28. Upon information and belief, in or about April, 2000, when paying off the tax arrears to the City of Troy for the property located at 9 North Drive, Troy, New York, an overpayment was made to the City of Troy as a result of the City's failure to allocate to the property the quarterly installment payment made by plaintiff to the City of Troy, on or about February 2, 1999.

29. In or about July, 2002 plaintiff paid to the City of Troy the sum of $24,016.44 to satisfy tax arrears due on property it owned on Pawling Avenue, Troy, New York. However, the actual amount of tax arrears due the City of Troy from plaintiff with regard to the Pawling Avenue property was $20,013.70 and not $24,016.44. The difference was the failure of the City of Troy to allocate to the Pawling Avenue property the quarterly installment payment made by plaintiff to the City of Troy on or about February 2, 1999.

30. On December 22, 1997 a building owned by plaintiff in the City of Troy was destroyed by fire. Out of the fire insurance proceeds, plaintiff paid to the City of Troy a lump sum of $200,000.00 to cover back taxes on its various properties including "The Alamo". Upon information and belief, the City of Troy failed to allocate any of

that $200,000.00 payment to the tax arrears due and owing on the property known as "The Alamo".

31. On or about March 31, 2000, plaintiff paid tax arrears to the City of Troy in the total amount of $96,119.14. Upon information and belief, the City of Troy did not allocate any of these tax payments to the tax arrears due and owing on the property known as "The Alamo".

32. On or about September 10, 1998 plaintiff filed a petition with the Rensselaer County Supreme Court seeking a review and reduction in the assessment on three parcels of property it owned, including the property known as "The Alamo", Tax Map No. 111.59-2-3.

33. That in October, 2000 the City of Troy, through its Department of Law entered into a stipulation with counsel for plaintiff settling the assessment proceeding brought by plaintiff in its notice of petition dated September 10, 1998.

34. The stipulation entered into October, 2000 provided that a Final Order may be made and entered correcting, reducing and fixing the assessments on the full value of real property of plaintiff, including "The Alamo" property, on the assessment roll of the City of Troy, County of Rensselaer, State of New York, for the years 1998, 1999, 2000 and 2001. The stipulation further provided as follows:

> That the assessment of the real property owned by plaintiff on the assessment roll of the City of Troy, for the years 1998, 1999, 2000 and 2001, namely Water Street, Tax Map No. 111.75-1-1./2 be corrected and reduced from a total assessment of $529,330.00; Main Street, Tax Map No. 111.67-1-3./3 be corrected and reduced from a total assessment of $50,000.00 and Main Street, Tax Map No. 111.59-2-3 ("The Alamo" property) be corrected and reduced from a total assessment of $31,560.00 to a total assessment of all three parcels of $200,000.00 and further,
>
> That the officials of the City of Troy and County of Rensselaer, having custody of the assessment roll correct said assessment on said assessment roll in accordance with the stipulation and that all taxes heretofore levied on said assessments but not yet paid by the petitioner (plaintiff), shall be reduced by said officials having said assessment roll in their charge, and upon payment by the petitioner (plaintiff) of the taxes so reduced, with interest as required by law, receipt in full for the said taxes on the said reduced assessment shall be given by the said officials to whom payment is lawfully made, and that any taxes paid by the petitioner levied on said assessments before reduction as herein

stipulated shall be proportionately refunded, without interest or costs.

35. The aforesaid stipulation was formalized by a Court Order dated October 27, 2000 signed by the Hon. George B. Ceresia, Jr., Justice of the Supreme Court.

36. Upon information and belief, before foreclosing on the real property known as "The Alamo", the City of Troy never corrected the assessments on its assessment roll for the real property known as "The Alamo".

37. Upon information and belief, had the City of Troy properly allocated tax payments made by plaintiff to the City of Troy including the $200,000.00 paid following the fire of December 22, 1997, including the quarterly payment paid to the City on February 2, 1999, including the $96,000.00 payment paid by plaintiff to the City of Troy on 3/31/00 and considering the overpayment of taxes made by plaintiff to City of Troy as aforesaid and had the City of Troy corrected the assessment on the property known as "The Alamo" in accordance with the stipulation entered into by the City of Troy in October, 2000 and directed by Court Order of Justice Ceresia dated October 27, 2000, there would have been no taxes due and owing from plaintiff to the City of Troy with regard to the property known as "The Alamo" and no basis for the City of Troy to foreclose on said property.

38. Upon information and belief, since November, 1999, the City of Troy has collected rents from tenants occupying a portion of the property identified as Tax Map No. 111.67-1-1.

39. Upon information and belief, since November, 1999, the City of Troy has caused one or more tenants including but not limited to Tech Hughes, to vacate the warehouse located at property identified as Tax Map No. 11.67-1.1.

40. Upon information and belief, since November, 1999, the City of Troy has stockpiled snow and salt in and upon the property identified as Tax Map No. 111.67-1-1 which, upon information and belief, has resulted in environmental contamination and which will require investigation and remediation.

41. At all times herein mentioned the conduct and actions of the City of Troy, its servants, agents and employees, including but not limited to the Department of Law, Treasurer's Office and Assessor's Office, were committed by persons acting under color of State Law.

42. Upon information and belief, at all times herein mentioned, the conduct and actions of the City of Troy, through its servants, agents and employees, including but not limited to the Department of Law, Treasurer's Office and Assessor's Office, were committed by persons having final policymaking authority.

AS AND FOR A FIRST CAUSE OF ACTION

43. Plaintiff repeats and realleges paragraphs numbered 1 through 42 with the same force and effect as if fully set forth at length hereinunder.

44. The defendant's taking by foreclosure of plaintiff's property "The Alamo" was improper, constituted an unconstitutional deprivation of property without procedural and/or substantive due process of law in violation of 42 U.S.C. §1983 and further deprived plaintiff of equal protection under the law.

AS AND FOR A SECOND CAUSE OF ACTION

45. Plaintiff repeats and realleges paragraphs numbered 1 through 44 with the same force and effect as if fully set forth at length hereinunder.

46. The defendant's taking by foreclosure of plaintiff's property "The Alamo" was brought about by the negligence of the defendant and without any negligence or culpable conduct on the part of the plaintiff contributing thereto.

AS AND FOR A THIRD CAUSE OF ACTION

47. Plaintiff repeats and realleges paragraphs numbered 1 through 46 with the same force and effect as if fully set forth at length hereinunder.

48. Upon the vacatur of the aforesaid foreclosure, plaintiff is ready, willing and able to perform its obligation under the Agreement to Lease and to effect the simultaneous Like Kind Exchange.

49. Plaintiff demands specific performance of all obligations called for in the Agreement to Lease.

WHEREFORE, plaintiff demands the following relief:

1. A full accounting of all tax accounts on properties owned by plaintiff in the City of Troy for the years 1994 through the present date.

2. Reimbursement to plaintiff of excess taxes paid to the City of Troy.

3. Vacating of the foreclosure of "The Alamo" property.

4. Specific performance of the Agreement to Lease.

5. Reimbursement to plaintiff for all rent collected by defendant from November, 1999 through the present date from tenants of the property identified as Tax Map No. 111.67-1-1 in the City of Troy.

6. Damages causing tenants to vacate the warehouse upon property identified as Tax Map No. 111.67-1-1.

7. Damages for the cost of investigation and remediation of the environmental contamination in and to the property identified as Tax Map No. 111..67-1-1.

8. A full accounting of all rents received and collected by defendant since November, 1999 from tenants at and upon the property identified as Tax Map No. 111.67-1-1.

9. Legal fees.

10. Costs and disbursements.

11. Such other and further relief as to the Court may seem just and proper.

Dated: March 18, 2005

_______/S/___________________
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